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14:05:38 1 THE COURT: All right. We're here in
14:05:41 2 B-16-30, Zapata, et al. versus HSBC.

14:05:47 3 Counselors, if you would introduce yourself.
14:05:49 4 Mr. Chaney, let's start with your table,
14:05:52 5 please, if you will.

14:05:52 6 MR. CHANEY: Your Honor, Mitchell Chaney.
14:05:54 7 I'm here for the Defendants with Jaime Saenz and
14:05:57 8 Mark Cohen, who's with Mayer Brown in their
14:06:00 9 Washington, D.C. office.

14:06:02 10 THE COURT: Okay.

14:06:04 11 MR. ELIAS: Good afternoon, Your Honor, my
14:06:05 12 name is Richard Elias. I am here with my colleagues
14:06:08 13 Greg Gutzler and Tammy Spicer from my firm, as well as
14:06:12 14 Michael Rodriguez and Trey Martinez.

14:06:15 15 THE COURT: All right. I'm going to take
14:06:17 16 this in kind of a strange order, but I -- there's a
14:06:20 17 method to my madness here.

14:06:22 18 I have read the complaint and it tosses
14:06:31 19 around the concept of whether something's been -- you
14:06:37 20 know, whether the cartels have been designated as a
14:06:40 21 terrorist organization. But the liability is not -- as
14:06:44 22 far as I can tell, it's not predicated on it.

14:06:46 23 You know, the liability's predicated on 18
14:06:49 24 U.S.C. 2333. And then, where it uses 2339, it uses
14:06:57 25 2339(a) and 2339(c).

14:07:01 1 And, so, I want to know how much difference
14:07:05 2 does it make to the merits of this lawsuit whether or
14:07:10 3 not they've been designated a terrorist organization.

14:07:15 4 MR. ELIAS: Your Honor, I can take that
14:07:16 5 question.

14:07:16 6 THE COURT: Okay.

14:07:17 7 MR. ELIAS: If by "designated" you mean,
14:07:19 8 have they been designated by Congress as an FTO --

14:07:19 9 THE COURT: Or the Secretary of State.

14:07:22 10 MR. ELIAS: -- or the Secretary of State, it
14:07:24 11 makes no difference in terms of whether they have
14:07:26 12 liability under 2339(a) or 2339(c).

14:07:31 13 The -- the -- the ATA is -- is very broad.
14:07:34 14 Its definition of terrorism is very broad. There is a
14:07:38 15 specific section that deals with FTO's, Foreign
14:07:43 16 Terrorist Organizations, that is 2339(b).

14:07:47 17 2339(a) and 2339(c) has no requirement for
14:07:50 18 liability to attach under those provisions that the
14:07:53 19 organizations be deemed FTO's by either Congress or the
14:07:57 20 Secretary of State.

14:07:58 21 In fact, there are -- 2339(a) is predicated
14:08:01 22 on very specific terrorism related crimes, all of which
14:08:06 23 were violated in this case.

14:08:07 24 2339(c) is more general.

14:08:10 25 So, to answer your question, it is certainly

14:08:12 1 our position that, in terms -- in order for liability to
14:08:15 2 attach, it is not necessary that the organizations be
14:08:18 3 deemed FTO's.

14:08:20 4 THE COURT: Mr. Chaney, what's your view on
14:08:23 5 this?

14:08:23 6 MR. CHANEY: Your Honor, I was all prepared
14:08:24 7 to talk about briefing schedules.

14:08:26 8 THE COURT: I know you were.

14:08:28 9 MR. CHANEY: I'd like -- I'd like for
14:08:29 10 Mr. Cohen, if it's okay with you, Judge --

14:08:31 11 THE COURT: No, I -- Mr. Cohen's fine.

14:08:33 12 MR. CHANEY: Okay. Thank you.

14:08:36 13 MR. COHEN: Well, Your Honor, as first
14:08:38 14 stated, one of the reasons we're here today is to avoid
14:08:41 15 lengthy conversations until the court decides it has
14:08:44 16 jurisdiction over the parties, but I'll let Mr. Chaney
14:08:47 17 talk to that.

14:08:48 18 But I think what Mr. Elias says is accurate.
14:08:51 19 There is -- of course, it's a lot easier if you are
14:08:52 20 designated. It's sort of probative of all sorts of
14:08:55 21 issues, but, under the two subsections they're claiming
14:08:57 22 under, it's not an absolute requirement that you need to
14:09:00 23 be designated.

14:09:01 24 THE COURT: All right. All right. Here's
14:09:02 25 the reason --

14:09:03 1 MR. COHEN: But it doesn't -- I wouldn't
14:09:04 2 say -- don't take that to mean that -- that we concede
14:09:09 3 that they've pleaded properly in terms of the nature of
14:09:10 4 the incidents, or that there are terrorist organizations
14:09:12 5 involved here, or acts of terrorism. But it's not an
14:09:15 6 absolute requirement under those two sections.

14:09:17 7 THE COURT: Here's -- here's why I asked
14:09:17 8 this.

14:09:18 9 And, Mr. Chaney, I, too, was here to talk
14:09:20 10 about briefing schedules and -- but, after I read the
14:09:25 11 complaint, my daughter is publishing a law review
14:09:31 12 article that the theme of it is that the cartels ought
14:09:34 13 to be designated as a terrorist organization. That's
14:09:37 14 their -- that's basically the bottom line. It has
14:09:41 15 nothing to do with (a) or (b), but it has a lot to do
14:09:44 16 with 2339 -- I mean, (a) or (c), 39(b).

14:09:51 17 And, you know, I'll have to -- I can't deny
14:09:55 18 I have read her article. And I -- I think what I'm
14:10:02 19 going to do is give both sides the opportunity to ask me
14:10:09 20 to recuse because of that if you want to.

14:10:13 21 In fact, the procedure will be, today is the
14:10:17 22 16th, I'll give you until, let's see if I have a
14:10:21 23 calendar in here, the 27th. So that's not this Friday,
14:10:32 24 but the Friday afterwards. Let me be sure. Yeah. And
14:10:38 25 just file something with the court. Don't file it with

14:10:41 1 me. Don't send it to me. And -- and you -- you can
14:10:44 2 file it sealed and just say, you know, if -- you know, I
14:10:47 3 would like the Judge to recuse himself.

14:10:49 4 And, if either side files that, the clerks
14:10:53 5 office will let me know that -- they won't say which
14:10:55 6 side, they'll just say one of the sides has asked you to
14:11:00 7 recuse.

14:11:01 8 It's not published yet, but it's going to be
14:11:04 9 published, as I understand, in one of the journals at
14:11:07 10 UT. But the theme of the article, basically, is that
14:11:17 11 there's no reason for the State Department not to
14:11:20 12 designate them. Basically because it puts another arrow
14:11:27 13 or two in their -- in the criminal side quiver. It has
14:11:32 14 nothing to do with civil liability, but, because of
14:11:36 15 that, the subject matter's pretty close and I wanted to
14:11:39 16 bring it to both of y'all's attention.

14:11:42 17 MR. CHANEY: Should we -- having heard that,
14:11:46 18 I don't know -- obviously, both sides need to speak to
14:11:49 19 their clients.

14:11:50 20 THE COURT: Well, that's why I gave you, you
14:11:51 21 know, basically two weeks.

14:11:53 22 MR. CHANEY: I understand. Should we --
14:11:56 23 should we put off this decision for you to make until
14:11:59 24 we --

14:11:59 25 THE COURT: Well, except, here's what I'm

14:12:02 1 thinking is let me -- let me institute a schedule that
14:12:06 2 both sides agree to. The -- about the initial.
14:12:11 3 Because, I mean, if somebody asks me to step down, I
14:12:13 4 will do it. I'll -- I'll tell you that right now. But
14:12:19 5 whoever inherits this is going to have the venue issue,
14:12:22 6 they're going to have the dismissal issue, you're going
14:12:24 7 to have all these different issues. And that's before
14:12:27 8 you get to the regular issues of, like, causation.

14:12:31 9 But it can -- it can be a working schedule,
14:12:36 10 and, if both sides agree to it, I think whoever inherits
14:12:40 11 it from me, and -- and it may be Judge Tagle, given
14:12:45 12 that -- that Judge Olvera won't take it, it will already
14:12:52 13 be in place and -- and y'all can move forward on it.

14:12:57 14 And, then, if they have to, you know,
14:12:59 15 because of the Judge's schedule, or whatever, have to
14:13:01 16 amend it, but, I mean, my looking at this thing, I think
14:13:06 17 it's going to take, you know, some pretty heavy duty
14:13:11 18 briefing on both sides.

14:13:12 19 MR. CHANEY: And, Judge, kind of jumping
14:13:16 20 ahead a little bit from what I was -- the order of which
14:13:20 21 I was going to talk, they have just now filed, I say
14:13:24 22 just now, very recently, filed an amended complaint.

14:13:28 23 I'm not sure if you read that or the
14:13:30 24 original complaint. The amended complaint --

14:13:31 25 THE COURT: Well, I can tell you which one.

14:13:33 1 I -- I read the amended.

14:13:34 2 MR. CHANEY: Okay. And it wasn't filed
14:13:38 3 permissibly under Rule 15. We each did -- we reached
14:13:41 4 out to them to say, let's work on a schedule. We won't
14:13:46 5 object, we won't file a motion to strike because it
14:13:49 6 should -- the court, in the rule, should grant it
14:13:53 7 freely. I'd love to reach an agreement about the
14:13:55 8 bifurcation -- the bifurcated briefing, but they're
14:13:59 9 opposed to the concept. And so I don't know how we can
14:14:02 10 reach an agreement on that.

14:14:03 11 THE COURT: Well, let me help you reach an
14:14:05 12 agreement on that. Because -- because I -- I -- I
14:14:11 13 think, whether it's me or whether it's some other Judge,
14:14:13 14 they're going to want to know, you know, if -- if -- if
14:14:16 15 they -- if -- if I don't have the case, you know, I
14:14:22 16 don't want to wade through a bunch of briefs on a bunch
14:14:25 17 of ancillary subjects if it's going to be decided by a
14:14:28 18 Judge in New York or somewhere else.

14:14:30 19 So, I mean, I think that's the first issue
14:14:32 20 that any Judge is going to want to hear about.

14:14:34 21 Go ahead.

14:14:37 22 MR. ELIAS: Your Honor, I -- I -- the one
14:14:37 23 thing that I want to add is that, naturally, the court
14:14:41 24 has to address the jurisdictional challenges. The issue
14:14:44 25 that they want is, and that they -- and that they've

14:14:47 1 brought to your attention, is -- is bifurcating
14:14:49 2 briefing.

14:14:51 3 It is -- there is no dispute that this court
14:14:55 4 has jurisdiction over at least one of the entities.
14:14:57 5 That is HSBC U.S. That is a bank that admitted criminal
14:15:02 6 liability for its willful conduct in facilitating the
14:15:06 7 laundering of \$881 million from Mexico into the
14:15:09 8 United States.

14:15:11 9 So, no matter what ruling this court makes,
14:15:15 10 whoever the Judge is, they're going to have to reach the
14:15:18 11 merits on -- on -- on the 12(b)6 issue with respect to
14:15:22 12 HSBC U.S. because it is our intent to proceed with
14:15:27 13 HSBC U.S. in this court.

14:15:28 14 THE COURT: Well, some judges, though, might
14:15:31 15 look at the venue issue first and let -- if they decide
14:15:35 16 that venue -- and -- and, again, I haven't seen either
14:15:38 17 side argue the venue -- but, I mean, I could see, quite
14:15:42 18 frankly, where it may be one of those situations where
14:15:44 19 venue is proper here, but maybe better somewhere else.
14:15:48 20 Or it may be not proper, or it may be better here than
14:15:53 21 somewhere else.

14:15:54 22 MR. CHANEY: We have conceded, Your Honor,
14:15:57 23 that venue would be proper for three of the four
14:16:00 24 Defendants in New York. So it may be that a court,
14:16:03 25 looking at the jurisdiction and -- and venue briefing,

14:16:10 1 decides that, excuse me, three of the four, there is
14:16:14 2 venue in New York.

14:16:15 3 The fourth, which is the United Kingdom
14:16:19 4 Corporation, our position is, and we've put it in our --
14:16:22 5 our brief, has had no contact with any state in the
14:16:26 6 United States.

14:16:27 7 So, two of the three, three of the three
14:16:30 8 remaining has -- would, theoretically, have venue and
14:16:35 9 jurisdiction in New York. So you very well might
14:16:38 10 decide, or a court may very well decide that.

14:16:41 11 And all we're saying is it would save a lot
14:16:44 12 of time and resources, both public resources for the
14:16:46 13 court and private for our -- for all the clients, if we
14:16:50 14 were able to brief that first and have a decision about
14:16:53 15 whether Fifth or Sixth or Second Circuit substantive law
14:16:58 16 might apply should we get to the 12(b)6 issue.

14:17:01 17 THE COURT: Well, Mr. Chaney, what's your
14:17:03 18 proposal? Let's talk about specifics.

14:17:06 19 MR. CHANEY: My -- my proposal is, given
14:17:08 20 that they've amended and didn't get court consent, or
14:17:12 21 our written consent, out of time, that -- that we get
14:17:17 22 three weeks to file our -- all of our motions to the
14:17:23 23 amended complaint.

14:17:24 24 We will agree on the record, or we can put
14:17:27 25 it in a document, that their -- their amended complaint

14:17:30 1 is the one that we will respond to.

14:17:33 2 And -- and -- and then, what we'd like to
14:17:36 3 do, is to get an additional, say, two weeks, to actually
14:17:41 4 brief the motion just for jurisdiction and venue.

14:17:45 5 So that our motions will be on file --

14:17:47 6 THE COURT: Well, let me stop you there.

14:17:48 7 Let me stop you there.

14:17:49 8 Any problem with that?

14:17:50 9 MR. ELIAS: Yes, Your Honor.

14:17:51 10 THE COURT: Okay. Tell me what the
14:17:53 11 problem is.

14:17:53 12 MR. ELIAS: Sure. I -- I want to say, first
14:17:54 13 of all, that we have properly filed the first amended
14:17:57 14 complaint. I've -- and they -- they raise it in a
14:18:00 15 footnote, but I can provide the authority to the court,
14:18:02 16 that, where extension of time -- where time is extended,
14:18:05 17 there is an incontinent extension under your right to
14:18:09 18 file under Rule 15.

14:18:10 19 But that aside, Your Honor --

14:18:12 20 THE COURT: You don't have to worry about
14:18:13 21 that.

14:18:13 22 MR. ELIAS: Okay.

14:18:14 23 THE COURT: I'm easy.

14:18:15 24 MR. ELIAS: Okay. All right. Okay.

14:18:17 25 MR. CHANEY: They've already won, so I -- I

14:18:20 1 agree.

14:18:22 2 MR. ELIAS: Your Honor, so, if I just heard
14:18:24 3 counsel correct, they want to file a motion in three
14:18:28 4 weeks and then a brief --

14:18:32 5 THE COURT: Well, I think what they're
14:18:33 6 saying is they want to respond to -- they want three
14:18:35 7 weeks to respond to the amended complaint. And I don't
14:18:38 8 think they're making any secret, their response is going
14:18:41 9 to be a motion to dismiss.

14:18:42 10 MR. CHANEY: Well --

14:18:42 11 MR. ELIAS: Correct. And I -- we don't have
14:18:44 12 any --

14:18:44 13 THE COURT: Or a motion to transfer.

14:18:46 14 MR. ELIAS: -- we don't have any problem
14:18:46 15 with that. What we want is that that motion be an
14:18:50 16 omnibus motion as --

14:18:51 17 MR. CHANEY: We --

14:18:51 18 MR. ELIAS: -- as -- as -- as contemplated
14:18:54 19 under 12(g), which means that they bring all of their --
14:18:55 20 they brief all of the issues together. It's up to the
14:18:57 21 court, certainly, to decide how it wants to take the
14:18:59 22 issues, but, certainly, these issues need to get brought
14:19:03 23 to the court, including any jurisdictional/venue
14:19:06 24 arguments, as well as the substantive arguments on -- on
14:19:09 25 Rule -- under Rule 12(b)6.

14:19:12 1 THE COURT: All right. Here's -- here's
14:19:14 2 what -- let's -- let's -- I'm allowing the -- the
14:19:21 3 amended complaint you just filed. So, I mean, we're not
14:19:24 4 having a problem there.

14:19:25 5 And -- and, Mr. Chaney, I'm going to give
14:19:27 6 your clients until June 3rd to respond to that amended
14:19:45 7 complaint in any way, fashion, you see fit, which, I
14:19:52 8 assume, is going to be a motion to dismiss as opposed to
14:19:54 9 an answer. Or a Motion to Transfer Venue.

14:19:57 10 MR. CHANEY: And, Your Honor, what we were
14:19:59 11 intending to do was to file a motion that raises all our
14:20:02 12 12(b) defenses. We have 12(b)3 jurisdiction and 12(b)4
14:20:07 13 venue defenses, as well as 12(b)6.

14:20:10 14 And -- and we've always said, and we said in
14:20:14 15 our reply and we've said to them on the phone, we don't
14:20:17 16 intend to have serial motions or to have a number of
14:20:22 17 different motions.

14:20:23 18 We want to have one motion that will contain
14:20:25 19 all of our defenses, including the request to transfer
14:20:28 20 under 1404 and 1406.

14:20:30 21 We just don't want to have to brief the
14:20:33 22 12(b)6 part of it until the court rules on the others.
14:20:36 23 That's all we're asking.

14:20:37 24 THE COURT: Now, wait a minute. Say that
14:20:39 25 again. You -- you don't want to brief the 12(b)6 until

14:20:43 1 the jurisdictional issues?

14:20:44 2 MR. CHANEY: Exactly. So -- so what we're
14:20:47 3 asking is that we will file the -- the motion -- we have
14:20:51 4 21 days -- or, excuse me, we have 14 days under the rule
14:20:55 5 after they file an amended complaint, which, I guess, is
14:20:59 6 today.

14:21:00 7 And we're going to raise all of the defenses
14:21:03 8 in our motion, which is both 12(b) and to transfer
14:21:08 9 because of improper venue. We just don't want to have
14:21:11 10 to brief the failure to state a claim part of it because
14:21:17 11 we will be briefing Fifth Circuit law. And, if -- if
14:21:21 12 the case is transferred, the law is that the transferee
14:21:26 13 court circuit law applies.

14:21:27 14 So we would have to re-brief the 12(b)
14:21:31 15 motions -- I mean, the 12(b)6 part of it in New York,
14:21:36 16 theoretically. And that's what we'd like to not do.

14:21:39 17 THE COURT: Tell me what's wrong with that.
14:21:39 18 Why -- why --

14:21:40 19 MR. ELIAS: I will -- I will tell you what's
14:21:42 20 wrong with that. It contravenes Rule 12(g)'s
14:21:45 21 consolidation requirement.

14:21:46 22 And, Your Honor, in the response to their
14:21:48 23 reply to their motion, we did -- we did cite the law.
14:21:50 24 But, under 12(g), all 12(b)6 -- all 12(b) motions need
14:21:55 25 to be brought together.

14:21:56 1 THE COURT: No. No. They're going to bring
14:21:58 2 it.

14:21:58 3 MR. ELIAS: I -- I -- I --

14:21:58 4 THE COURT: They're just not going to brief
14:22:00 5 it.

14:22:00 6 MR. ELIAS: I understand.

14:22:00 7 MR. CHANEY: That's exactly the difference,
14:22:02 8 Your Honor.

14:22:02 9 MR. ELIAS: And -- and -- and -- and,
14:22:03 10 Your Honor, the dif -- the problem with that is that
14:22:04 11 there is no difference in substance, there's no
14:22:08 12 substantive difference, between filing a motion and then
14:22:13 13 deferring briefing until one issue is resolved than to
14:22:17 14 be -- than to file the motion separately. The -- the
14:22:19 15 whole purpose behind Rule 12(g) is to -- is -- is to
14:22:24 16 ensure that threshold motions are adjudicated together.

14:22:30 17 THE COURT: And I agree with that.

14:22:32 18 MR. ELIAS: And that -- and that there is
14:22:33 19 not piecemeal adjudication and serial filings of -- of
14:22:37 20 arguments in furtherance of threshold motions.

14:22:41 21 And, Your Honor, I'll cite to you, and I
14:22:43 22 have cited, the Fifth Circuit case that stands for that
14:22:45 23 exact proposition. That's the *Floyd* case. And we cited
14:22:49 24 it in our papers. And also this court itself, in -- in
14:22:53 25 several instances, has discussed the salutatory purpose

14:23:00 1 behind Rule 12(g) and we think that it would be a delay,
14:23:05 2 an unnecessary delay, to defer briefing on all of the
14:23:09 3 issues.

14:23:09 4 If they're going to present their motion,
14:23:11 5 they should present all of their arguments at once.
14:23:16 6 And, whether the court decides to dismiss some of the
14:23:19 7 Defendants or not, again, Your Honor, we have -- we
14:23:23 8 submit to this court that jurisdiction is appropriate,
14:23:27 9 and venue, as they do admit, is appropriate over HSBC
14:23:31 10 U.S. under the ATA. And we're going to have to get to
14:23:35 11 these issues anyway, at least with respect to HSBC U.S.

14:23:41 12 THE COURT: So I -- and I -- here's what I'm
14:23:41 13 going to do.

14:23:41 14 Mr. Chaney, you've got until the 3rd to
14:23:43 15 respond and you've got to the 17th to fully brief
14:23:48 16 everything but the 12(b)6.

14:23:51 17 MR. CHANEY: Thank you, Judge.

14:23:52 18 THE COURT: All right. And from the
14:23:54 19 Plaintiff's standpoint, two weeks, three weeks, how much
14:23:58 20 time do you think you need to respond? We're talking
14:24:00 21 all the jurisdictional, all the venue, how much time do
14:24:04 22 you need?

14:24:05 23 MR. ELIAS: If it's -- if -- if it's being
14:24:07 24 presented only as the jurisdictional arguments --

14:24:10 25 THE COURT: Well, it's going to be venue,

14:24:12 1 too, because they want to go to New York.

14:24:14 2 MR. ELIAS: I understand. Your Honor, we --
14:24:16 3 we will -- three weeks would be fine.

14:24:21 4 THE COURT: Okay. So you -- so, Mr. Chaney,
14:24:23 5 you have until the 17th. And -- and the Plaintiffs have
14:24:28 6 to July 8th to respond to it.

14:24:34 7 And that's everything but the 12(b)6.

14:24:42 8 And then, if it's in my court, I'll rule on
14:24:47 9 it and we'll immediately brief the 12(b)6 and -- and get
14:24:52 10 it done and then we'll go to the merits.

14:24:54 11 MR. CHANEY: Perfect.

14:24:55 12 THE COURT: Assuming we're here.

14:24:57 13 MR. CHANEY: Perfect.

14:24:58 14 THE COURT: And if it's in somebody else's
14:25:01 15 court, at least we're moving the ball down the line.

14:25:03 16 Because, if I don't do it now, you guys are
14:25:05 17 going to be mired for another six weeks waiting until
14:25:07 18 somebody gets appointed.

14:25:10 19 MR. ELIAS: Right.

14:25:12 20 THE COURT: And, either way, this gets the
14:25:13 21 ball rolling and -- and gets it moving.

14:25:21 22 And I --

14:25:23 23 MR. CHANEY: Judge, could we have --

14:25:25 24 THE COURT: -- I could see a down side to
14:25:29 25 that.

14:25:30 1 Go ahead, Mr. Chaney.

14:25:30 2 MR. CHANEY: To the extent we feel like a
14:25:33 3 reply is necessary, could we have a week after their
14:25:35 4 deadline to file a reply?

14:25:37 5 THE COURT: Yes.

14:25:38 6 MR. CHANEY: And -- and I assume that the
14:25:39 7 court, taking the threshold issues like this -- and, by
14:25:42 8 the way, Judge, in our papers, we said we would file
14:25:45 9 the -- all the 12(b) stuff within 14 days of your
14:25:49 10 decision if part of the case stays here, but I assume
14:25:52 11 that -- that we don't need to have the pretrial
14:25:56 12 conference and file all that until the court rules on
14:25:59 13 jurisdiction and --

14:25:59 14 THE COURT: That's correct.

14:26:01 15 MR. CHANEY: Okay.

14:26:01 16 THE COURT: That's correct. And -- and --
14:26:03 17 and I -- I understand, you know, you're accurate, you're
14:26:06 18 not misquoting the rule, you're right about the rule.

14:26:09 19 But, as a practical matter, any Judge that
14:26:11 20 gets this, whether it's me or somebody else, they're
14:26:14 21 going to have to work their way through these issues one
14:26:18 22 by one anyway.

14:26:19 23 So -- and they're going to do it with venue
14:26:22 24 and -- and jurisdiction first and then figure out the --
14:26:24 25 the rest of it.

14:26:24 1 So, this just, more or less, formalizes what
14:26:27 2 I think most courts would do informally anyway.

14:26:32 3 MR. CHANEY: Should --

14:26:36 4 THE COURT: Mr. Saenz, you can talk, you
14:26:38 5 don't have to whisper to Chaney.

14:26:41 6 MR. SAENZ: I enjoy whispering.

14:26:43 7 MR. CHANEY: Just to be clear, the joint
14:26:45 8 discovery case management plan will be in abeyance while
14:26:49 9 you decide?

14:26:50 10 THE COURT: It will be. It will be.

14:26:51 11 MR. CHANEY: Okay. Thank you, Judge, for
14:26:52 12 your time.

14:26:53 13 THE COURT: Is there anything else we can
14:26:55 14 resolve today? And I -- and I -- as I said, I mean, we
14:27:02 15 will -- if either side moves to recuse me, I -- I -- I'm
14:27:05 16 telling you both right now, I will step down. So --
14:27:09 17 but, until a new Judge changes the schedule, you're --
14:27:14 18 you're bound to this schedule. So I want to make --
14:27:18 19 make sure everybody understands that, that we're moving
14:27:21 20 forward.

14:27:21 21 Now, if there's a new Judge, obviously, that
14:27:24 22 new Judge can do whatever they want to do.

14:27:27 23 MR. CHANEY: Sure.

14:27:28 24 THE COURT: But --

14:27:28 25 MR. ELIAS: Your -- your --

14:27:30 1 THE COURT: Go ahead.

14:27:31 2 MR. ELIAS: I understand that -- I
14:27:35 3 understand that you're holding the 26th conference, or,
14:27:38 4 I'm sorry, our scheduling conference in abeyance.

14:27:41 5 The question I have is: I think it would be
14:27:46 6 helpful if the parties at least engage in some activity
14:27:51 7 to get the ball rolling. I'm not saying that requests
14:27:55 8 be responded to, but, certainly, in order to get the
14:27:57 9 balling rolling on discovery, such as at least having
14:28:02 10 the preliminary discussions about how documents are
14:28:05 11 stored, where they're kept, so that, when we do get to
14:28:10 12 the point where we're ready for a schedule, that
14:28:12 13 we're -- we're not starting from -- from a position
14:28:16 14 of -- of --

14:28:17 15 THE COURT: No, that's fine with me. I'm
14:28:18 16 not telling you you can't do discovery. Although, to me
14:28:22 17 what makes sense, of course, and I know the least about
14:28:28 18 this case than either side, is I would be worried about
14:28:34 19 discovery that either one has anything to do with
14:28:36 20 jurisdiction. You know, if -- if -- y'all may know
14:28:40 21 all -- all the jurisdictional facts, or, two, anything
14:28:43 22 that has to do with what will be the 12(b)6 factors.

14:28:49 23 MR. ELIAS: And -- and, Your Honor, based on
14:28:51 24 that, we intend on serving requests, so -- so I just
14:28:54 25 wanted to clarify for the court, and I understand that

14:28:56 1 you may not be familiar with all of the issues, but --

14:28:58 2 THE COURT: No, I'm -- I'm -- I'm giving you
14:28:59 3 permission to do discovery.

14:29:01 4 MR. ELIAS: Okay. All right. Then -- then
14:29:02 5 we will do that.

14:29:03 6 MR. CHANEY: Your Honor, we -- the problem
14:29:05 7 with that is that -- that the -- the issue that you have
14:29:09 8 to determine first, I think, is whether the court has
14:29:12 9 jurisdiction over these three Defendants and the case is
14:29:16 10 going to be -- the three other than the one and the case
14:29:20 11 is going to be here.

14:29:21 12 Because, I mean, the -- I think the cases
14:29:25 13 suggest that a determination about 12(b) and -- and the
14:29:30 14 jurisdictional issues should be made first.

14:29:33 15 THE COURT: Well, but if I'm -- Mr. Chaney,
14:29:36 16 if I'm not making it, some other Judge is going to have
14:29:38 17 to make it.

14:29:39 18 MR. CHANEY: I understand you'll make those
14:29:40 19 decisions, but -- but the -- the pleadings of the
14:29:43 20 Plaintiff have to stand on their own for the court to
14:29:47 21 determine if they're adequate.

14:29:48 22 If they're, you know, if they meet the --
14:29:51 23 the Twombly and Iqbal standards.

14:29:55 24 THE COURT: Well, I -- that, I understand.
14:29:56 25 But what I'm -- what I was -- and, see, I don't know the

14:29:57 1 facts, but, I mean, if -- if you guys are claiming
14:30:00 2 there's no jurisdiction here because we don't do
14:30:02 3 business in Texas, for instance, they might want to
14:30:05 4 concentrate on, you know, requests for admissions
14:30:08 5 saying, yes, you do. You know?

14:30:10 6 MR. CHANEY: They might, but --

14:30:12 7 MR. ELIAS: And -- and -- and, Your Honor,
14:30:13 8 to that point, okay, we think that the proper analysis
14:30:17 9 here is a nationwide context.

14:30:19 10 But we've also alleged in our amended
14:30:22 11 complaint specific jurisdiction under the Texas long arm
14:30:25 12 statute. And our basis for that is that a substantial
14:30:28 13 amount of the portions that were laundered in Mexico
14:30:31 14 went from HSBC Mexico into Texas through accounts. And
14:30:36 15 it includes bulk cash deposits and it includes accounts
14:30:40 16 of known money launderers that HSBC facilitated.

14:30:44 17 Now, it is our position that that goes, not
14:30:46 18 only to jurisdiction, but to the merits. These issues
14:30:49 19 are very intertwined and -- and so we need to get
14:30:52 20 discovery right away on those issues because they're
14:30:55 21 going to make the argument we're going to have to have
14:30:58 22 that discovery in order to get through the
14:30:59 23 jurisdictional issues anyway.

14:31:01 24 MR. CHANEY: Judge, they're -- they don't
14:31:02 25 know the arguments that we are going to make. We're --

14:31:04 1 we're --

14:31:04 2 THE COURT: Well, presumably, they'll know
14:31:06 3 in two weeks.

14:31:07 4 MR. CHANEY: Right, they'll know in two
14:31:09 5 weeks, but -- but to submit -- you're talking about --
14:31:11 6 I -- I think we're talking about really complex and
14:31:14 7 expensive discovery. We've got Defendants in three
14:31:18 8 separate countries. And the -- the issue of whether you
14:31:21 9 have jurisdiction over the Defendant is one of the --
14:31:24 10 especially HSBC Mexico, the -- the issue isn't contact
14:31:30 11 with the nation under the ATA, as I understand it. The
14:31:34 12 issue is contact with the nation, with any part of the
14:31:37 13 nation, only if they effect service on the Defendant in
14:31:40 14 the nation. And they've not done that with any
14:31:43 15 Defendant, other than the bank in New York.

14:31:46 16 So -- so the -- the -- we have said in our
14:31:51 17 brief that the -- the Mexican entities concede that they
14:31:57 18 are willing to be -- to have the case in New York. So,
14:32:01 19 under Rule 4, that's really the only thing you'd look
14:32:04 20 at.

14:32:04 21 Could we at least ask the court for
14:32:06 22 permission to do this: At the same time that we file
14:32:10 23 our motion for all but the 12(b)6 motion, could we file
14:32:15 24 a brief on the -- the issue of whether or not discovery
14:32:20 25 should take place prior to the ruling?

14:32:22 1 THE COURT: Well, and -- and to the extent
14:32:23 2 that I'm still involved, you know, I'll be glad to hear,
14:32:29 3 and you can -- we can do it by phone, or if y'all want
14:32:31 4 to be here, we can do it, you know, sooner or later,
14:32:37 5 though, I mean, we'll resolve the discovery dispute.

14:32:40 6 If there's a discovery dispute, you know, I
14:32:43 7 don't mind the concept of saying, okay, let's -- let's
14:32:47 8 do one, and for lack of a better term, I'll say document
14:32:52 9 production, for instance --

14:32:53 10 MR. ELIAS: Exactly.

14:32:54 11 THE COURT: -- that has to do with
14:32:56 12 jurisdictional issues. You know, and the Plaintiffs
14:33:00 13 aren't barred from coming back and later on asking for
14:33:03 14 one on the merits.

14:33:05 15 Now, there -- will there be some overlap?
14:33:08 16 Sure there will be overlap.

14:33:09 17 MR. ELIAS: And, Your --

14:33:09 18 MR. CHANEY: But will you also give us the
14:33:11 19 ability, if they file discovery that we think is
14:33:14 20 inappropriate or -- or we think that the discovery
14:33:18 21 should be stayed up until the time you make the ruling
14:33:21 22 on -- if -- if you're the Judge on venue and
14:33:24 23 jurisdiction, could we file a brief at the same time we
14:33:27 24 file our -- our motion?

14:33:28 25 THE COURT: Oh, absolutely. Or you can, you

14:33:30 1 know, point out -- I mean, this is going to be a
14:33:32 2 complicated case for both sides.

14:33:35 3 MR. ELIAS: Right.

14:33:35 4 THE COURT: I mean, you know, I don't get
14:33:37 5 many complaints like this that are this long and -- and,
14:33:41 6 you know, it's, for lack of a better term, this is
14:33:44 7 tripe, kind of cutting edge stuff. I think both sides
14:33:48 8 will agree to that. I mean, you guys might say cutting
14:33:51 9 edge, you guys might say frivolous. But -- but, you
14:33:56 10 know, given that -- but, I mean, you know, so there's
14:33:59 11 going to be -- you're going to have to work through this
14:34:01 12 together anyway. So, I will be available to facilitate
14:34:06 13 it and we can walk through it together. But, you know,
14:34:11 14 and I know the Plaintiffs don't necessarily want it this
14:34:13 15 way, but I think stepping, taking each step at a time,
14:34:18 16 is the best way to do it.

14:34:19 17 Because I -- any Judge, whether it's me or
14:34:23 18 somebody else, is going to pick venue or jurisdiction
14:34:27 19 and that's what they're going to look at first. And --
14:34:29 20 and they may look at them together, but -- but they're
14:34:32 21 not going to worry about the merits until they figure
14:34:35 22 out if they've got jurisdiction.

14:34:36 23 MR. ELIAS: And, Your Honor, from -- from
14:34:38 24 our standpoint, getting the ball rolling on discovery
14:34:42 25 would help a great deal, particularly the jurisdictional

14:34:45 1 discovery.

14:34:45 2 And I just will flag for the court, you
14:34:48 3 know, what we are going to seek is that discovery of
14:34:51 4 money going from HSBC Mexico from money laundering
14:34:55 5 accounts into the United States, as well as a very
14:34:57 6 discreet set of documents that HSBC has produced to the
14:35:02 7 United States Department of Justice, as well as the --
14:35:04 8 the Senate committee pursuant to their document request
14:35:09 9 that will encompass many of the relevant documents to
14:35:13 10 jurisdiction as well as merits and --

14:35:15 11 THE COURT: Well, I would just tailor it to
14:35:16 12 that, though. Tailor it to the jurisdiction and -- and
14:35:19 13 venue. And -- and I'm, you know, telling you now that,
14:35:25 14 either side, I mean, there's going to be discovery both
14:35:27 15 ways.

14:35:28 16 MR. ELIAS: Right.

14:35:29 17 THE COURT: You know, let's resolve these
14:35:31 18 issues and then we'll go to the next set.

14:35:35 19 MR. ELIAS: Okay.

14:35:35 20 MR. CHANEY: We'll try to work it out with
14:35:37 21 them, but, if we can't, we'll come back.

14:35:39 22 THE COURT: If you can't, I'll be glad to --
14:35:41 23 to referee if -- if I'm still on board.

14:35:42 24 MR. CHANEY: Thank you, Judge.

14:35:43 25 MR. ELIAS: Thank you, Your Honor.

14:35:44 1 THE COURT: Anything else we can resolve
14:35:46 2 today? All right. Thank y'all.

14:35:47 3 MR. ELIAS: Okay.

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1 REPORTER'S CERTIFICATE

2
3 I certify that the foregoing is a correct transcript
4 from the record of proceedings in the above-entitled
5 matter.
6

7
8 /s/ Sheila E. Perales.
SHEILA E. PERALES, CSR RPR CRR
9 Exp. Date: Dec. 31, 2016
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